

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

11 PETER VELASCO, CHRISTOPHER) Case No. CV 13-08080 DDP (VBKx)
12 WHITE, JACQUELINE YOUNG, and)
13 CHRISTOPHER LIGHT, on behalf) **ORDER RE CENTER FOR AUTO SAFETY'S**
of themselves and all others) **MOTION TO UNSEAL AND MOTION TO**
similarly situated,) **INTERVENE**
14 Plaintiffs,) [Dkt. Nos. 81, 82]
15 v.)
16 CHRYSLER GROUP LLC ,)
17 Defendant.)

19 Presently before the Court are motions by nonparty Center for
20 Auto Safety ("CAS") to intervene in this matter and to unseal
21 documents related to Plaintiffs' prior motion for a preliminary
22 injunction, (Dkt. No. 49), which was denied on October 27, 2014.
23 (Dkt. No. 88.) Having considered the parties' submissions and oral
24 arguments, the Court adopts the following order.

25 | I. BACKGROUND

26 This case is a putative class action regarding the alleged
27 failure of an electronic control unit, known as the "TIPM-7,"
28 installed in a number of late-model Chrysler vehicles. On March

1 26, 2014, Magistrate Judge Kenton issued a protective order
2 allowing any party to designate a document in the case
3 "Confidential," which would protect the document from public view.
4 (Dkt. No. 35.) On September 18, 2014, Plaintiffs moved for a
5 preliminary injunction authorizing them to send potential class
6 members a preliminary notice warning of the potential for dangerous
7 component failures in Chryslers equipped with the TIPM-7. (Dkt.
8 No. 49.) Plaintiffs applied to submit certain documents related to
9 the motion "provisionally under seal," because the parties were
10 still attempting to reach settlement. (Dkt. No. 51.) Plaintiffs
11 nonetheless expressed the opinion that the documents should be in
12 the public record, and they requested the right to subject the
13 documents to "later motion practice" to unseal "should the parties
14 be unable to resolve their disagreement." (Id.)

15 Defendant similarly filed an application to submit documents
16 in opposition to the motion under seal, primarily because the
17 documents constituted confidential business information. (Dkt. No.
18 63.) The Court granted both parties leave to file under seal. The
19 documents filed under seal were as follows:

- 20 • Unredacted copies of the Motion and Memorandum in Support
21 of the Motion, the proposed Order, the Opposition, and
22 the Reply;
- 23 • Unredacted declaration of David Stein and Exhibits A-U
24 attached thereto;
- 25 • Unredacted declaration of Rachel Naor and Exhibit P
26 attached thereto;
- 27 • Unredacted declaration of James Bielenda and Exhibits A-D
28 attached thereto;

- Exhibits B, C, E, F, and Q attached to the declaration of Dylan Hughes;
 - The parties' various applications and proposed orders regarding the sealing of the above documents.

5 On October 27, 2014 the Court heard oral arguments and denied the
6 motion for preliminary injunction. (Dkt. No. 88.)

7 On October 23, 2014, nonparty CAS filed these motions to
8 intervene in the case and to unseal the sealed portions of the
9 record on the motion for preliminary injunction. (Dkt. Nos. 81,
10 82.) Defendant opposes the motions. (Dkt. Nos. 95, 96.)

II. LEGAL STANDARD

12 "Nonparties seeking access to a judicial record in a civil
13 case may do so by seeking permissive intervention under Rule 24(b)
14" San Jose Mercury News, Inc. v. U.S. Dist. Court--N. Dist.
15 (San Jose), 187 F.3d 1096, 1100 (9th Cir. 1999). Rule 24(b)
16 ordinarily requires the intervenor to show "(1) an independent
17 ground for jurisdiction; (2) a timely motion; and (3) a common
18 question of law and fact between the movant's claim or defense and
19 the main action." Beckman Indus., Inc. v. Int'l Ins. Co., 966 F.2d
20 470, 473 (9th Cir. 1992). However, where a nonparty proposes to
21 intervene solely for the limited purpose of ensuring public access
22 to court documents, no independent ground for jurisdiction is
23 required. Id.

24 Ordinarily, there is a strong presumption that court records
25 should be open to public inspection. Nixon v. Warner Commc'ns,
26 Inc., 435 U.S. 589, 597 (1978). However, the right is not
27 absolute, and public access may be denied, for example, where the
28 records involved contain sensitive business information, the

1 release of which "might harm a litigant's competitive standing."
2 Id. at 598. "[M]ost judicial records may be sealed only if the
3 court finds 'compelling reasons.' However, a less exacting 'good
4 cause' standard applies to . . . previously sealed discovery
5 attached to a nondispositive motion.'" Oliner v. Kontrabecki, 745
6 F.3d 1024, 1025 (9th Cir. 2014) (citations omitted) (internal
7 quotation marks omitted).

8 **III. ANALYSIS**

9 **A. Motion to Intervene**

10 CAS argues that it has satisfied the requirements for
11 permissive intervention under Rule 24(b), because it has intervened
12 in a timely manner and its attempt to unseal documents in the case
13 clearly shares "common questions of law and fact" with the main
14 action. Defendant does not dispute that CAS meets these
15 requirements, but argues that the Court should nonetheless deny the
16 motion to intervene because the intervention could prejudice the
17 adjudication of its rights, CAS's interests are adequately
18 represented by the original parties, and it does not serve the
19 principle of judicial economy to allow CAS to intervene. (Opp'n to
20 Mot. Intervene at 2-8.)

21 On the merits, the Court finds it likely that CAS has the
22 better argument. Nonetheless, the proposed intervention is for the
23 sole purpose of unsealing the documents in question, and the Motion
24 to Unseal is denied, Part III.B. infra. There is no other reason
25 for CAS to be a party to this action. The Motion to Intervene is
26 therefore denied without prejudice.

27 **B. Motion to Unseal**

28 **1. Legal Standard**

1 The public is presumptively entitled to review court records.
2 Ordinarily, a party must show "compelling reasons" to seal a court
3 document. Kamakana v. City & Cnty. of Honolulu, 447 F.3d 1172,
4 1178 (9th Cir. 2006). However, the party need only show "good
5 cause" to keep sealed records attached to a "non-dispositive"
6 motion. Id. at 1180. Defendant argues that the motion for
7 preliminary injunction was such a "non-dispositive" motion. CAS
8 argues, on the other hand, that a motion for preliminary injunction
9 can be "dispositive" if "the documents at issue are, in fact,
10 relevant to the merits of a case." (Reply ISO Mot. Unseal at 5:12-
11 14.) Here, CAS argues, the documents sought are relevant to the
12 merits, the preliminary injunction motion should be considered
13 "dispositive," and Defendant should be required to show "compelling
14 reasons" why the documents should remain sealed.

15 There is little clarity as to what, exactly, constitutes a
16 "dispositive" motion. "Aside from noting that summary judgment
17 motions are dispositive, and that discovery sanctions motions are
18 non-dispositive, the distinction has not been articulated by the
19 Ninth Circuit." Dish Network L.L.C. v. Sonicview USA, Inc., No.
20 09-CV-1553 L (NLS), 2009 WL 2224596, at *6 (S.D. Cal. July 23,
21 2009) (citations omitted). Plaintiff cites a recent District of
22 Idaho case, Melaleuca Inc. v. Bartholomew, for the proposition that
23 a motion for preliminary injunction is a dispositive motion,
24 because "[i]njunctive relief proceedings involve significant
25 discussion of the merits of the case." No. 4:12-CV-00216-BLW, 2012
26 WL 5931690, at *2 (D. Idaho Nov. 27, 2012) (internal quotation mark
27 omitted). See also Selling Source, LLC v. Red River Ventures, LLC,
28 2011 WL 1630338, *5 (D.Nev.2011); Dish Network, 2009 WL 2224596, at

1 *6. The Court does not find this argument persuasive, for two
 2 reasons.

3 First, it ignores the plain meaning of the word "dispositive":
 4 motions for preliminary injunction do not actually create any sort
 5 of "disposition," in the sense of a *final* determination on some
 6 issue.¹ The Northern District of California rejected arguments
 7 almost identical to those made by CAS here, precisely because the
 8 preliminary injunction did not offer a final resolution on the
 9 merits:

10 According to the media entities . . . a preliminary injunction
 11 is dispositive because such a motion "inevitably involve[s]
 12 consideration of the merits of a dispute." *But this argument*
 13 *misconstrues the discussion in Kamakana, which emphasizes the*
 14 *"resolution of a dispute on the merits," not the mere*
 15 *"consideration" of the merits.* The media entities similarly
 16 place undue emphasis on the Kamakana court's characterization
 17 of non-dispositive motions (that such motions "are often
 18 unrelated, or only tangentially related, to the underlying
 19 cause of action.")

20 In view of the Ninth Circuit's reasoning, the court concludes
 21 that a preliminary injunction motion is not dispositive
 22 because, unlike a motion for summary adjudication, it neither
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24
 25 ¹Black's, for example, defines "disposition" as "[a] final
 26 settlement or determination" and "dispositive" as "bringing about a
 27 final determination." Black's Law Dictionary 505 (8th ed.2004).
 See also In re Seracare Life Sciences, Inc., No. 05-CV-2335-H
 (CAB), 2007 WL 935583, at *16 (S.D. Cal. Mar. 19, 2007) ("[B]ecause
 28 the case against KPMG will be over if the Court grants its motion,
 KMPG's motion is dispositive.").

1 resolves a case on the merits nor serves as a substitute for
2 trial.

3 In re Nat'l Sec. Agency Telecommunications Records Litig., No. MDL
4 06-1791 VRW, 2007 WL 549854, at *3-4 (N.D. Cal. Feb. 20, 2007)
5 (emphasis added). See also Reilly v. MediaNews Grp. Inc., No.
6 C06-04332 SI, 2007 WL 196682 (N.D. Cal. Jan. 24, 2007) (treating
7 motion for TRO as non-dispositive).

8 Second, even if the Melaleuca, Selling Source, and Dish
9 Network courts are correct that a motion for a preliminary
10 injunction *can* be a dispositive motion, it does not follow that
11 every motion for an injunction will be dispositive. Likely that
12 determination should depend on the nature of the relief requested.

13 For example, in Dish Network, the district court granted
14 plaintiff satellite television companies' ex parte motion for a
15 temporary restraining order and a writ of civil seizure against
16 manufacturers of equipment allowing consumers to "intercept and
17 steal" the plaintiffs' signals. Dish Network, 2009 WL 2224596, at
18 *1. The motion asked the court to enjoin a defendant from
19 continuing a disputed business practice - a temporary version of
20 the relief requested in the underlying lawsuit. Necessarily, in
21 order to grant the motion, the court had to peek into the merits of
22 the case, in order to determine that there was sufficient evidence
23 of the piracy alleged in the underlying case. Moreover, the TRO
24 covered no other extraneous matters; thus, the court's decision on
25 the TRO was limited to, and fundamentally dependent on, an
26 examination of the merits of the case.

27 In this case, however, the motion was *not* a motion to
28 temporarily grant the relief ultimately sought in underlying suit;

1 rather, it was a request to send notice of potential problems with
2 Defendant's vehicles to thousands of purchasers. Determining
3 whether to send such notice necessarily involved consideration of
4 the widest possible range of vehicles, some of which may ultimately
5 be weeded out by the parties in the course of litigation. Thus, it
6 involved evidence and issues which may ultimately not factor into
7 the underlying case. Moreover, in Dish Network the plaintiff
8 requested a writ of seizure, which was necessary to prevent the
9 destruction of evidence crucial to the main case. Here, however,
10 the prosecution of the main case did not turn on the outcome of the
11 motion; the case could easily have continued without the motion
12 ever being filed at all. Thus, unlike the motion in Dish Network,
13 the motion in this case was not even intended to aid in the
14 ultimate disposition of the case.

15 Because the motion for preliminary injunction here was not a
16 resolution of any issue on the merits, was broader and shallower in
17 scope than a true consideration of the merits, and was not
18 necessary to the resolution of the case, the Court finds that the
19 motion was not dispositive.

20 Because the motion was a non-dispositive motion, and the
21 exhibits attached to it were sealed under the magistrate's
22 protective order, the Court conducts its analysis under the good
23 cause standard, not the compelling reasons standard.

24 **2. Good Cause to Keep Documents Sealed**

25 The Court finds that in this case there is good cause to keep
26 the documents sealed at this time, for at least three reasons.
27 First, a number of the documents seem to include Defendant's
28 technical information, which could comprise trade secrets. Of

1 course, technical information is only a trade secret if it provides
2 competitors with some useful advantage.² Techniques and processes
3 which are obvious to anyone in the industry do not count as trade
4 secrets.³

5 In a declaration attached to the Opposition, James Bielenda,
6 Chrysler's Manager of Product Investigations, explains that some of
7 the documents could provide competitors with information about
8 Defendant's manufacturing and testing processes, specifications,
9 and standards, as well as Defendant's "operational capacity."
10 (Bielenda Decl., ¶¶ 14-17.) Such information could provide
11 competitors with specific guidance as to how to manufacture their
12 own products more efficiently, without having to engage in the
13 expensive research and development that Defendant has already done.
14 The disclosure of such specific technical information, in other
15 words, would enable competitors to "leapfrog" Defendant's hard
16 engineering work and unfairly reap the competitive rewards.

17 Under this rationale, documents which contain specific
18 technical information about Defendant's manufacturing and testing
19 processes, or product standards and tolerances, are likely to be
20 trade secrets. As far as the Court can determine at present, given
21 limited briefing, the group of documents containing such

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23 ²"The economic value of that property right [in a trade
24 secret] lies in the competitive advantage over others that Monsanto
25 enjoys by virtue of its exclusive access to the data, and
disclosure or use by others of the data would destroy that
competitive edge." Ruckelshaus v. Monsanto Co., 467 U.S. 986, 1012
(1984).

26 ³Self Directed Placement Corp. v. Control Data Corp., 908 F.2d
27 462, 465 (9th Cir. 1990) (affirming a district court holding that
28 "[i]t would be absurd to permit [the [plaintiff] to appropriate as
his own 'secrets' common pedagogical and job search techniques
which would be used in any job placement course.").

information would likely encompass at least the following: Exhibits A-C, E, and J-P (Dkt. No. 57); the Bielenda Decl. (Dkt. No. 65) and Exhibit A thereto; and Exhibits E and F to Hughes Decl. (Dkt. No. 74).

5 Other documents currently under seal seem to have less claim
6 to trade secret status; the bulk of the remaining documents are
7 internal communications among Defendant's employees, or between its
8 employees and outside contractors, that do not appear to contain
9 significant technical information. A few others are letters
10 between counsel. Nonetheless, the Court declines to unseal them at
11 this time.

12 Important policy considerations favor not unsealing the
13 documents. As Defendant points out, the record at this time is
14 incomplete. While bringing to light and publicly examining product
15 failures, and manufacturers' responsibility for such failures, is
16 one of the key functions of this kind of litigation, it is also
17 important that the Court not release information that could become
18 "a vehicle for improper purposes." Nixon v. Warner Commc'ns, Inc.,
19 435 U.S. 589, 598 (1978). One such improper purpose would be to
20 "promote public scandal." Id. Speaking generally, with absolutely
21 no reference to CAS itself, there is some danger that the wide
22 publication of selected, out-of-context materials, in a matter that
23 is only in the early stages of litigation, could unnecessarily harm
24 Defendant and present an unfair picture of the alleged facts to the
25 public.⁴

²⁷ "Of course, "[t]he mere fact that the production of records
may lead to a litigant's embarrassment, incrimination, or exposure
²⁸ to further litigation will not, without more, compel the court to
(continued...)

1 This concern is bolstered by the fact that, even with complete
2 access to the sealed documents, the Court could not come to any
3 solid conclusion as to what they might prove – which is why the
4 Court denied the motion for preliminary injunction in the first
5 place. (Dkt. No. 88.) The disclosure of early, incomplete
6 discovery documents that the Court itself found inconclusive has
7 great potential to mislead the public.

8 This is particularly the case when it comes to the disclosure
9 of small snippets of informal corporate communications, which may
10 frequently be incomplete, inaccurate, jocular, or filled with an
11 insider's shorthand or jargon. An offhand remark in an email can
12 easily become the "gotcha" quote in headlines and press releases,
13 and Defendant would be forced to litigate the case in court *and*
14 litigate in the press. Moreover, as investigations of alleged
15 TIPM-7 failures are ongoing both inside and outside the company,
16 the Court is leery of creating an environment that would chill free
17 and open communication among Defendant's engineers, or incentivize
18 the use of closed-door meetings that leave no paper trail.

19 The motion to unseal is therefore denied, except for the
20 documents described in Part III.B.4., infra.

21 This is not to say that these documents may never be unsealed,
22 or that identical information will not become available to the
23 public in the course of the litigation. When the Court is called
24 upon to make *dispositive* rulings, the "compelling reasons" standard

25 ⁴(...continued)
26 seal its records." Kamakana v. City & Cnty. of Honolulu, 447 F.3d
27 1172, 1179 (9th Cir. 2006). Certainly, in the event that the full
28 adjudication of this case reveals facts that are embarrassing to
Defendant, that will provide no reason to hide them from public
view.

1 will apply, and Defendant will be granted much less deference in
2 protecting its technical information and its internal
3 communications. Because the record will be more complete, there
4 will be less concern that disclosure could give a false impression
5 or unnecessarily promote public scandal. The Court may also
6 subject Defendant's alleged trade secrets to significantly more
7 scrutiny at that point. The Court emphasizes that this order is
8 limited to the narrow question posed - whether the sealed documents
9 documents submitted in support of arguments about the motion for
10 preliminary injunction should be unsealed at this time.

11 **3. Briefs and Declarations**

12 In its Reply, CAS argues that "[b]ecause the parties' briefing
13 and declarations on the motion for preliminary injunction are not
14 even arguably discovery documents, they cannot possibly fall under
15 the exception to the presumption of public access for sealed
16 discovery documents attached to non-dispositive motions. Therefore
17 . . . the compelling reasons standard indisputably applies to these
18 records." (Reply ISO Mot. Unseal at 6.) This argument relies on a
19 highly literal reading of the rule that completely negates its
20 intended effect. There can be no reason to attach a discovery
21 document to a motion or brief except in order to make reference to
22 its contents, and it would be nonsensical to carefully exempt the
23 discovery document from disclosure, only to allow full disclosure
24 of citations to it in a briefing paper. The same standard applies
25 to the discovery documents and to the references to them in the
26 briefs and declarations. The redacted portions of the briefs and
27 declarations remain under seal.

28 ///

1 **4. Disclosures Agreed to by Defendant**

2 Defendant has no objection to the unsealing of: Naor Decl. &
3 Ex. P thereto; Stein Decl., Exs. H, Q; Hughes Decl., Ex. Q. (Opp'n
4 to Mot. Unseal at 1 n.1.). These documents will therefore be
5 unsealed.

6 **IV. CONCLUSION**

7 CAS's Motion to Intervene and Motion to Unseal are DENIED.
8 However, the denial is without prejudice, and CAS is free to move
9 to intervene again in the event that future motions also present
10 questions of public access to court records. Additionally, as all
11 parties agree to the unsealing of certain documents, the Court
12 hereby ORDER the Plaintiffs to file a single new document entitled
13 "DOCUMENTS PREVIOUSLY FILED, UNSEALED AS ORDERED BY THE COURT"
14 comprised of one unredacted copy of each of the following: Naor
15 Decl. (Dkt. No. 55) & Ex. P thereto; Exs. H, Q to Stein Decl. (Dkt.
16 No. 57); Ex. Q. to Hughes Decl. (Dkt. No. 74).

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18 IT IS SO ORDERED

19 Dated: December 30, 2014



20 DEAN D. PREGERSON
United States District Judge

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